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SUBCHAPTER I—TRADE POLICY FOR SUB-
SAHARAN AFRICA

§ 3701. Findings

Congress finds that—

- (1) it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa;
- (2) the 48 countries of sub-Saharan Africa form a region richly endowed with both natural and human resources;
- (3) sub-Saharan Africa represents a region of enormous economic potential and of enduring political significance to the United States;
- (4) the region has experienced the strengthening of democracy as countries in sub-Saharan Africa have taken steps to encourage broader participation in the political process;
- (5) certain countries in sub-Saharan Africa have increased their economic growth rates, taken significant steps towards liberalizing their economies, and made progress toward regional economic integration that can have positive benefits for the region;
- (6) despite those gains, the per capita income in sub-Saharan Africa averages approximately \$500 annually;
- (7) trade and investment, as the American experience has shown, can represent powerful tools both for economic development and for encouraging broader participation in a political process in which political freedom can flourish;
- (8) increased trade and investment flows have the greatest impact in an economic environment in which trading partners eliminate barriers to trade and capital flows and encourage the development of a vibrant private sector that offers individual African citizens the freedom to expand their economic opportunities and provide for their families;

(9) offering the countries of sub-Saharan Africa enhanced trade preferences will encourage both higher levels of trade and direct investment in support of the positive economic and political developments under way throughout the region; and

(10) encouraging the reciprocal reduction of trade and investment barriers in Africa will enhance the benefits of trade and investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.

(Pub. L. 106-200, title I, § 102, May 18, 2000, 114 Stat. 252.)

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-432, div. D, title VI, § 6001, Dec. 20, 2006, 120 Stat. 3190, provided that: "This title [amending section 3721 of this title] may be referred to as the 'Africa Investment Incentive Act of 2006'."

SHORT TITLE

Pub. L. 106-200, § 1(a), May 18, 2000, 114 Stat. 251, provided that: "This Act [see Tables for classification] may be cited as the 'Trade and Development Act of 2000'."

Pub. L. 106-200, title I, § 101, May 18, 2000, 114 Stat. 252, provided that: "This title [enacting this chapter and sections 2466a and 2466b of this title and amending section 2463 of this title and sections 2193 and 2293 of Title 22, Foreign Relations and Intercourse] may be cited as the 'African Growth and Opportunity Act'."

AGOA ACCELERATION

Pub. L. 108-274, July 13, 2004, 118 Stat. 820, as amended by Pub. L. 108-429, title II, § 2004(j)(1), Dec. 3, 2004, 118 Stat. 2595, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'AGOA Acceleration Act of 2004'.

"SEC. 2. FINDINGS.

"The Congress finds the following:

"(1) The African Growth and Opportunity Act [19 U.S.C. 3701 et seq.] (in this section and section 3 referred to as 'the Act') has helped to spur economic growth and bolster economic reforms in the countries of sub-Saharan Africa and has fostered stronger economic ties between the countries of sub-Saharan Africa and the United States; as a result, exports from the United States to sub-Saharan Africa reached record levels after the enactment of the Act, while exports from sub-Saharan Africa to the United States have increased considerably.

"(2) The Act's eligibility requirements have reinforced democratic values and the rule of law, and have strengthened adherence to internationally recognized worker rights in eligible sub-Saharan African countries.

"(3) The Act has helped to bring about substantial increases in foreign investment in sub-Saharan Africa, especially in the textile and apparel sectors, where tens of thousands of new jobs have been created.

"(4) As a result of the Agreement on Textiles and Apparel of the World Trade Organization, under which quotas maintained by WTO member countries on textile and apparel products end on January 1, 2005, sub-Saharan Africa's textile and apparel industry will be severely challenged by countries whose industries are more developed and have greater capacity, economies of scale, and better infrastructure.

"(5) The underdeveloped physical and financial infrastructure in sub-Saharan Africa continues to discourage investment in the region.

"(6) Regional integration establishes a foundation on which sub-Saharan African countries can coordi-

nate and pursue policies grounded in African interests and history to achieve sustainable development.

“(7) Expanded trade because of the Act has improved fundamental economic conditions within sub-Saharan Africa. The Act has helped to create jobs in the poorest region of the world, and most sub-Saharan African countries have sought to take advantage of the opportunities provided by the Act.

“(8) Agricultural biotechnology holds promise for helping solve global food security and human health crises in Africa and, according to recent studies, has made contributions to the protection of the environment by reducing the application of pesticides, reducing soil erosion, and creating an environment more hospitable to wildlife.

“(9) (A) One of the greatest challenges facing African countries continues to be the HIV/AIDS epidemic, which has infected as many as one out of every four people in some countries, creating tremendous social, political, and economic costs. African countries need continued United States financial and technical assistance to combat this epidemic.

“(B) More awareness and involvement by governments are necessary. Countries like Uganda, recognizing the threat of HIV/AIDS, have boldly attacked it through a combination of education, public awareness, enhanced medical infrastructure and resources, and greater access to medical treatment. An effective HIV/AIDS prevention and treatment strategy involves all of these steps.

“(10) African countries continue to need trade capacity assistance to establish viable economic capacity, a well-grounded rule of law, and efficient government practices.

“SEC. 3. STATEMENT OF POLICY.

“The Congress supports—

“(1) a continued commitment to increase trade between the United States and sub-Saharan Africa and increase investment in sub-Saharan Africa to the benefit of workers, businesses, and farmers in the United States and in sub-Saharan Africa, including by developing innovative approaches to encourage development and investment in sub-Saharan Africa;

“(2) a reduction of tariff and nontariff barriers and other obstacles to trade between the countries of sub-Saharan Africa and the United States, with particular emphasis on reducing barriers to trade in emerging sectors of the economy that have the greatest potential for development;

“(3) development of sub-Saharan Africa’s physical and financial infrastructure;

“(4) international efforts to fight HIV/AIDS, malaria, tuberculosis, other infectious diseases, and serious public health problems;

“(5) many of the aims of the New Partnership for African Development (NEPAD), which include—

“(A) reducing poverty and increasing economic growth;

“(B) promoting peace, democracy, security, and human rights;

“(C) promoting African integration by deepening linkages between African countries and by accelerating Africa’s economic and political integration into the rest of the world;

“(D) attracting investment, debt relief, and development assistance;

“(E) promoting trade and economic diversification;

“(F) broadening global market access for United States and African exports;

“(G) improving transparency, good governance, and political accountability;

“(H) expanding access to social services, education, and health services with a high priority given to addressing HIV/AIDS, malaria, tuberculosis, other infectious diseases, and other public health problems;

“(I) promoting the role of women in social and economic development by reinforcing education

and training and by assuring their participation in political and economic arenas; and

“(J) building the capacity of governments in sub-Saharan Africa to set and enforce a legal framework, as well as to enforce the rule of law;

“(6) negotiation of reciprocal trade agreements between the United States and sub-Saharan African countries, with the overall goal of expanding trade across all of sub-Saharan Africa;

“(7) the President seeking to negotiate, with interested eligible sub-Saharan African countries, bilateral trade agreements that provide investment opportunities, in accordance with section 2102(b)(3) of the Trade Act of 2002 (19 U.S.C. 3802(b)(3));

“(8) efforts by the President to negotiate with the member countries of the Southern African Customs Union in order to provide the opportunity to deepen and make permanent the benefits of the Act while giving the United States access to the markets of these African countries for United States goods and services, by reducing tariffs and non-tariff barriers, strengthening intellectual property protection, improving transparency, establishing general dispute settlement mechanisms, and investor-state and state-to-state dispute settlement mechanisms in investment;

“(9) a comprehensive and ambitious trade agreement with the Southern African Customs Union, covering all products and sectors, in order to mature the economic relationship between sub-Saharan African countries and the United States and because such an agreement would deepen United States economic and political ties to the region, lend momentum to United States development efforts, encourage greater United States investment, and promote regional integration and economic growth;

“(10) regional integration among sub-Saharan African countries and business partnerships between United States and African firms; and

“(11) economic diversification in sub-Saharan African countries and expansion of trade beyond textiles and apparel.

“SEC. 4. SENSE OF CONGRESS ON RECIPROCITY AND REGIONAL ECONOMIC INTEGRATION.

“It is the sense of the Congress that—

“(1) the preferential market access opportunities for eligible sub-Saharan African countries will be complemented and enhanced if those countries are implementing actively and fully, consistent with any remaining applicable phase-in periods, their obligations under the World Trade Organization, including obligations under the Agreement on Trade-Related Aspects of Intellectual Property, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade-Related Investment Measures, as well as the other agreements described in section 101(d) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d));

“(2) eligible sub-Saharan African countries should participate in and support mutual trade liberalization in ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries;

“(3) some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries; therefore, eligible sub-Saharan African countries will benefit from the reduction of trade barriers in other developing countries, especially in developing countries that represent some of the greatest potential markets for African goods and services; and

“(4) all countries should make sanitary and phytosanitary decisions on the basis of sound science.

“SEC. 5. SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS OF AGOA.

“It is the sense of the Congress that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection of the Department of Homeland Security, and the Department of Commerce, should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act [19 U.S.C. 3721], relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible sub-Saharan African countries.

“SEC. 6. DEFINITION.

“In this Act, the term ‘eligible sub-Saharan African country’ means an eligible sub-Saharan African country under the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.].

“SEC. 7. EXTENSION OF AFRICAN GROWTH AND OPPORTUNITY ACT.

[Amended sections 2466a, 2466b, and 3721 of this title.]

“SEC. 8. ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE AFRICAN GROWTH AND OPPORTUNITY ACT.

“(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Secretary of the Treasury shall liquidate or reliquidate as free of duty and free of any quantitative restrictions, limitations, or consultation levels entries of articles described in subsection (d) made on or after October 1, 2000, and before the date of the enactment of this Act [July 13, 2004].

“(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Secretary of the Treasury within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Secretary to locate the entry or reconstruct the entry if it cannot be located.

“(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

“(d) ENTRIES.—The entries referred to in subsection (a) are entries of apparel articles that meet the requirements of section 112 of the African Growth and Opportunity Act [19 U.S.C. 3721], as amended by section 3108 of the Trade Act of 2002 [Pub. L. 107-210] and this Act.

“SEC. 9. DEVELOPMENT STUDY AND CAPACITY BUILDING.

“(a) REPORTS.—The President shall, by not later than 1 year after the date of the enactment of this Act [July 13, 2004], conduct a study on each eligible sub-Saharan African country, that—

“(1) identifies sectors of the economy of that country with the greatest potential for growth, including through export sales;

“(2) identifies barriers, both domestically and internationally, that are impeding growth in such sectors; and

“(3) makes recommendations on how the United States Government and the private sector can provide technical assistance to that country to assist in dismantling such barriers and in promoting investment in such sectors.

“(b) DISSEMINATION OF INFORMATION.—The President shall disseminate information in each study conducted under subsection (a) to the appropriate United States agencies for the purpose of implementing recommendations on the provision of technical assistance and in identifying opportunities for United States investors, businesses, and farmers.

“SEC. 10. ACTIVITIES IN SUPPORT OF INFRASTRUCTURE TO SUPPORT INCREASING TRADE CAPACITY AND ECOTOURISM.

“(a) FINDINGS.—The Congress finds the following:

“(1) Ecotourism, which consists of—

“(A) responsible and sustainable travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features, both past and present) and animals, including species that are rare or endangered,

“(B) promotion of conservation and provision for beneficial involvement of local populations, and

“(C) visitation designed to have low negative impact upon the environment, is expected to expand 30 percent globally over the next decade.

“(2) Ecotourism will increase trade capacity by sustaining otherwise unsustainable infrastructure, such as road, port, water, energy, and telecommunication development.

“(3) According to the United States Department of State and the United Nations Environment Programme, sustainable tourism, such as ecotourism, can be an important part of the economic development of a region, especially a region with natural and cultural protected areas.

“(4) Sub-Saharan Africa enjoys an international comparative advantage in ecotourism because it features extensive protected areas that host a variety of ecosystems and traditional cultures that are major attractions for nature-oriented tourism.

“(5) National parks and reserves in sub-Saharan Africa should be considered a basis for regional development, involving communities living within and adjacent to them and, given their strong international recognition, provide an advantage in ecotourism marketing and promotion.

“(6) Desert areas in sub-Saharan Africa represent complex ecotourism attractions, showcasing natural, geological, and archaeological features, and nomad and other cultures and traditions.

“(7) Many natural zones in sub-Saharan Africa cross the political borders of several countries; therefore, transboundary cooperation is fundamental for all types of ecotourism development.

“(8) The commercial viability of ecotourism is enhanced when small and medium enterprises, particularly microenterprises, successfully engage with the tourism industry in sub-Saharan Africa.

“(9) Adequate capacity building is an essential component of ecotourism development if local communities are to be real stakeholders that can sustain an equitable approach to ecotourism management.

“(10) Ecotourism needs to generate local community benefits by utilizing sub-Saharan Africa’s natural heritage, parks, wildlife reserves, and other protected areas that can play a significant role in encouraging local economic development by sourcing food and other locally produced resources.

“(b) ACTION BY THE PRESIDENT.—The President shall develop and implement policies to—

“(1) encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry in eligible sub-Saharan African countries;

“(2) encourage and facilitate transboundary cooperation among sub-Saharan African countries in order to facilitate trade;

“(3) encourage the provision of technical assistance to eligible sub-Saharan African countries to establish and sustain adequate trade capacity development; and

“(4) encourage micro-, small-, and medium-sized enterprises in eligible sub-Saharan African countries to participate in the ecotourism industry.

“SEC. 11. ACTIVITIES IN SUPPORT OF TRANSPORTATION, ENERGY, AGRICULTURE, AND TELECOMMUNICATIONS INFRASTRUCTURE.

“(a) FINDINGS.—The Congress finds the following:

“(1) In order to increase exports from, and trade among, eligible sub-Saharan African countries, transportation systems in those countries must be improved to increase transport efficiencies and lower transport costs.

“(2) Vibrant economic growth requires a developed telecommunication and energy infrastructure.

“(3) Sub-Saharan Africa is rich in exportable agricultural goods, but development of this industry remains stymied because of an underdeveloped infrastructure.

“(b) ACTION BY THE PRESIDENT.—In order to enhance trade with Africa and to bring the benefits of trade to African countries, the President shall develop and implement policies to encourage investment in eligible sub-Saharan African countries, particularly with respect to the following:

“(1) Infrastructure projects that support, in particular, development of land transport road and railroad networks and ports, and the continued upgrading and liberalization of the energy and telecommunications sectors.

“(2) The establishment and expansion of modern information and communication technologies and practices to improve the ability of citizens to research and disseminate information relating to, among other things, the economy, education, trade, health, agriculture, the environment, and the media.

“(3) Agriculture, particularly in processing and capacity enhancement.

“SEC. 12. FACILITATION OF TRANSPORTATION.

“In order to facilitate and increase trade flows between eligible sub-Saharan African countries and the United States, the President shall foster improved port-to-port and airport-to-airport relationships. These relationships should facilitate—

“(1) increased coordination between customs services at ports and airports in the United States and such countries in order to reduce time in transit;

“(2) interaction between customs and technical staff from ports and airports in the United States and such countries in order to increase efficiency and safety procedures and protocols relating to trade;

“(3) coordination between chambers of commerce, freight forwarders, customs brokers, and others involved in consolidating and moving freight; and

“(4) trade through air service between airports in the United States and such countries by increasing frequency and capacity.

“SEC. 13. AGRICULTURAL TECHNICAL ASSISTANCE.

“(a) IDENTIFICATION OF COUNTRIES.—The President shall identify not fewer than 10 eligible sub-Saharan African countries as having the greatest potential to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance, particularly with respect to pest risk assessments and complying with sanitary and phytosanitary rules of the United States.

“(b) PERSONNEL.—The President shall assign at least 20 full-time personnel for the purpose of providing assistance to the countries identified under subsection (a) to ensure that exports of agricultural products from those countries meet the requirements of United States law.

“SEC. 14. TRADE ADVISORY COMMITTEE ON AFRICA.

“The President shall convene the trade advisory committee on Africa established by Executive Order 11846 of March 27, 1975 [19 U.S.C. 2111 note], under section 135(c) of the Trade Act of 1974 [19 U.S.C. 2155(c)], in order to facilitate the goals and objectives of the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.] and this Act, and to maintain ongoing discussions with African trade and agriculture ministries and private sector organizations on issues of mutual concern, including regional and international trade concerns and World Trade Organization issues.”

[Pub. L. 108-429, title II, §2004(j)(2), Dec. 3, 2004, 118 Stat. 2595, provided that:

[“(A) IN GENERAL.—The amendment made by paragraph (1) [amending Pub. L. 108-274, set out above] shall take effect as if included in the enactment of section 8 of the AGOA Acceleration Act of 2004 [Pub. L. 108-274].

[“(B) REQUESTS FOR RETROACTIVE APPLICATION.—Section 8(b) of the AGOA Acceleration Act of 2004 shall be applied with respect to the amendment made by paragraph (1) by substituting ‘90 days after the date of the enactment of the Miscellaneous Trade and Technical Corrections Act of 2004 [Dec. 3, 2004]’ for ‘90 days after the date of the enactment of this Act’.”]

§ 3702. Statement of policy

Congress supports—

(1) encouraging increased trade and investment between the United States and sub-Saharan Africa;

(2) reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and United States trade;

(3) expanding United States assistance to sub-Saharan Africa’s regional integration efforts;

(4) negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa;

(5) focusing on countries committed to the rule of law, economic reform, and the eradication of poverty;

(6) strengthening and expanding the private sector in sub-Saharan Africa, especially enterprises owned by women and small businesses;

(7) facilitating the development of civil societies and political freedom in sub-Saharan Africa;

(8) establishing a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum; and

(9) the accession of the countries in sub-Saharan Africa to the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

(Pub. L. 106-200, title I, §103, May 18, 2000, 114 Stat. 253.)

§ 3703. Eligibility requirements

(a) In general

The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country—

(1) has established, or is making continual progress toward establishing—

(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

(C) the elimination of barriers to United States trade and investment, including by—